113-290

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1117.

ALFRED SULLY, APPELLANT,

vs.

WILLIAM R. MATTHEWS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED OCTOBER 18, 1884.

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1 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term thereof begun and holden at the United States court-house, at the city of Des Moines, in said district, on the second Tuesday of May, it being the thirteenth day of May, A. D. 1884, before the Honorable David J. Brewer, Hon. J. M. Love, and Hon. O. P. Shiras, judges.

Attest: E. R. MASON, *Clerk.*

2 Be it remembered that heretofore, to wit, on the 13th day of May, 1884, a transcript of record from the circuit court of the State of Iowa in and for Jasper county was filed in the clerk's office of the United States circuit court for the southern district of Iowa, central division, in a certain cause, wherein William R. Mathews was complainant and D. G. Winchell, treasurer, &c., *et al.* were defendants, which said transcript is in the words and figures following, to wit:

3 *Petition in Equity.*

In the Circuit Court of Iowa in and for Jasper county. April Term, A. D. 1883.

WILLIAM R. MATHEWS
vs.
D. G. WINCHELL, Treasurer of Jasper County, Iowa; THE NEW Sharon Coal Valley & Eastern Railroad Company; The Chicago, Burlington & Pacific Railroad Company; A. Sully, Levi Conover, R. P. Ratliff, and S. W. Castor, Trustees of Lynn Grove Township.

I. Your petitioner, William R. Mathews, respectfully represents and shows to the court that he is now, and long before the happening of the several matters and things hereinafter stated was,
4 a resident citizen and tax payer in Lynn Grove township, Jasper county, Iowa, and is now, and was at the time of the election hereinafter recited, was, and ever since has been, the owner of both real and personal property subject to taxation, and as such resident citizen and tax payer as aforesaid, with all the other tax payers in said township, is interested in the tax-levy assessment and tax to be fully hereinafter set out and stated, and he brings this action not only in his own behalf, but of all the other tax payers in said township, who number several hundred, and are too numerous to be all brought before the court, to the end that thereby a multiplicity of suits may be avoided, and the questions and rights of your petitioner and all the other tax payers as aforesaid, as well as
5 those of the several defendants hereinafter named, may be fully determined and adjudicated.

II. Your petitioner further represents and shows to the court that on the 15th day of March, A. D. 1880, S. W. Castor, L. Conover, and R. P. Ratliff, who were then trustees of said Lynn Grove township, issued their notice as such trustees as aforesaid, calling a special election, to be held in said township on the 8th day of April, A. D. 1880, to determine the question whether a five per cent. tax should be voted in aid of the construction of the New Sharon Coal Valley

and Eastern Railroad Company, a copy of which said notice is hereto attached, marked Exhibit "A," and made a part of this petition.

III. Your petitioner further represents and shows to the
6 court that said notice was based upon a certain paper purporting to be the petition of a majority of the freehold tax payers resident in said township, and your petitioner shows and alleges that to secure signers to the said petition in one or more instances a pledge was given by those who were circulating and obtaining signatures to said petition, for and in behalf of the said railroad company, that if they would so sign such petition they would see that their taxes, which might be voted should a sufficient number of signers be procured, should be paid or cancelled, and that in the event the matter should be submitted to a vote and the tax carried that it should cost them nothing.

That in the said one instance, or more as aforesaid, such
7 party relied upon and signed the said petition because of the said representation, promise, and inducement offered as aforesaid, and upon and for no other consideration.

IV. Your petitioner further represents and shows to the court that on the day fixed in said notice, to wit, the 8th day of April, A. D. 1880, an election was held in said township, and at which election it was determined that a majority of the votes had been cast in favor of the said tax; and afterward a certain paper was filed in the office of the auditor of Jasper county, Iowa, and upon which paper the auditor of said county proceed-- to extend the five per cent. tax, so alleged to have been voted and carried at said election, upon the tax duplicate for said Lynn Grove township, and said tax duplicate has been placed in the hands of D. G. Winchell, who is
8 the treasurer of Jasper county, Iowa, for collection, and said Winchell, as such treasurer, is proceeding to collect the same with like force and effect and in the same manner as though the same was a valid and enforcible tax.

Then the said paper, as aforesaid, does not purport to be the certificate of either the township clerk or clerk of said election, or of any officer of said township, or in anywise connected therewith, and such paper conferred upon the auditor or board of supervisors of said county no authority whatever to extend the tax or to make a levy, or to collect the same after being extended or levied.

V. And your petitioner further shows to the court
9 that if said paper as aforesaid shall be regarded as an attempted certificate, such as is required by law, then the same is fatally defective, because it does not undertake to give the time when the same shall be collected and the times and terms upon which the same, when collected, is to be paid to the railroad company under the conditions of the notice, and it does not follow the terms and conditions of the notice, that is to say, the said notice of election, among other things, provides, as a condition fixing the time when the tax should be due and collectible, that "said road" is to be fully completed and running to a depot within one-half mile of the town plat of the town of Lynnville, in the above-men-

10 tioned township, and on the south side of the river, and connecting with any line now in operation, or that may be built, east of the town of Lynnville, before the tax is due and collectible, and to be built within the time required by law."

That the statement made in said paper as aforesaid was prepared by an agent of the defendant railroad, and it contains, neither in substance or fact, the conditions and stipulations contained in the notice, a copy of which certificate is hereto attached, marked Exhibit "B," and made a part of the petition.

VI. Your petitioner further shows to the court that said tax was placed upon the said tax-books without authority, and that the same is wholly illegal and void, because the pretended notice
11 of election fails to specify the line of railroad proposed to be aided, a name alone being given, beginning at no point, and proposed to be extended to no place, wholly failing to comply with the requirements of the statute in such cases made and provided, and conferring no power or authority to hold the election or to collect a tax alleged to have been voted thereat.

VII. Your petitioner further represents and shows to the court that after the election had been held, as aforesaid, the defendant, The New Sharon Coal Valley & Eastern Railroad Company attempted by the adoption of an amendment to their articles of incorporation to change its name to that of the Chicago, Burlington & Pacific Railroad Company, and under the latter name some
12 work was continued on a line of road from New Sharon to Newton until about the 1st of November, A. D. 1882, then the said Chicago, Burlington & Pacific Railroad Company sold and transferred and surrendered possession of all the work that had been done by it to the Central railway of Iowa, and since which time the former has and had no rights or interests therein.

VIII. Your petitioner further represents and shows to the court that the New Sharon Coal Valley and Eastern Railroad Company, to induce parties to sign their petition to submit to a vote the question of aiding it by a tax upon said township, and afterward to aid in securing votes at the election, published, represented, and prom-
13 ised that should said tax be voted, the main line of said road should be built and located as stated in the notice, and divers and various persons were shown by the officers and agents of said corporation where said main line should be run and the road built, and such main line was expressly guaranteed to the first voters, and they believed and relied upon its being built as and at the place represented as aforesaid, and that it was to be the main line of the road, and so believing and relying thereon, signed the petition and voted for the tax on said 8th day of April, as aforesaid.

That after the tax had been voted, and after a change had taken place in the officers of the railroad company, the plans of the said road were wholly changed and a road was partially built from
14 New Sharon to Newton, passing the town of Lynnville; about two miles south of said town, and at said point or west therefrom, a spur was put in and partially completed to the town of Lynnville, and this spur so partially completed is the only railroad

built, and the same is not a road built to a depot, as stated in the notice of election, and connecting with a line in operation or that was thereafter built east of the town of Lynnville.

That said spur is but a side track from the main line running to a point near the town of Lynnville.

IX. Your petitioner further represents and shows to the court that a railroad has not been built to said town, as set out and stipulated in said notice; that said spur has never been completed,
15 and at the time said work was turned over to the Central railway [of] Iowa, as aforesaid, the said spur, as before alleged, was without cattle-guards where the same entered and left the improved land of the adjoining owners and where the same crossed the public highways, and the same was without a sufficient number of ties, and generally the same was in an unfinished condition; and the same was true of the main line from Newton to New Sharon, there being but two or three cattle-guards upon the whole line, and the road crossing being left in an unfinished and unsafe condition, and the said railroad was without wood and water stations, rolling stock, engines, or other appliances for its opera-
16 tion, and said road was not, as required to be by the terms of the notice of election, "fully completed," and is not now, though the time within which the same was to be done has fully expired.

X. Your petitioner further represents and shows to the court that when the petition upon which the notice of election was based was presented to the township trustees to pass upon and issue the notice no determination was made of record; that said petition had been signed by a majority of the resident freehold tax payers, the only record made of the same being in these words, that is to say, "It was found that the petitioners amounted to 123, which is now on file; the freeholders amounted to 163;" and your petitioner alleges that before such notice could have been lawfully issued and the said township board have obtained jurisdiction and authority
17 to issue the notice there must have been a finding that these one hundred and twenty-three petitioners constituted a majority of the resident freeholders.

XI. Your petitioner further represents that one A. Sully, who is made a defendant herein, claims to have some interest or right in the said tax and its collection.

XII. Your petitioner further represents that the defendants, Levi Conover, R. P. Ratliff, and S. W. Castor, are the trustees of Lynn Grove township, and an effort is being made to induce or compel them to certify that the conditions and stipulations contained in the election notice have been complied with, and that the defendant railroad company is entitled to the whole of said tax.

18 XIII. Wherefore your petitioner prays that a temporary writ of injunction may issue, restraining the defendants, Levi Conover, R. P. Ratliff, and S. W. Castor, trustees as aforesaid, from certifying that the defendant railroad company has complied with the conditions and stipulations contained in the election notice before recited, and restraining and enjoining the defendant, D. G. Win-

chell, treasurer as aforesaid, from proceeding to collect said tax or paying over to the defendant railroad company, or its assigns, any of said tax that may have been collected thereunder; that upon the final hearing of this cause the said injunction may be made perpetual; that the said levy and assessment of the tax aforesaid may be declared illegal, null, void, and of no effect, and the same be
19 declared cancelled, and held for naught, and for such other and further relief as he may be entitled to in equity and good conscience, and that he have judgment for costs for such.

WINSLOW & WILSON &
BLANCHARD & WILLIAMS,
Att'ys for Pl't'ff.

STATE OF IOWA, }
Jasper County, } *ss:*

I, William R. Mathews, being duly sworn, say that I am the plaintiff in this suit, and that the matters and things in this petition stated are true, as I verily believe.

WM. R. MATHEWS.

Subscribed and sworn to by William R. Mathews before me, and in my presence, this 16th day of March, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

20 To the county auditor, Jasper county, Iowa:

At a special election held at Lynnville, Lynn Grove township, State of Iowa, on the 8th day of April, 1880, for the purpose of voting upon the question of aiding by a five per cent. tax of the taxable property of said township in the construction of the New Sharon Coal Valley & Eastern railroad, there were two hundred and ninety-five votes cast for or against said tax, as follows, to wit:

For taxation	151
Against taxation	144

Two and one-half per cent. [of] said tax to be collected in the year 1881 and two and one-half per cent. in the year 1882, and to be paid to the railroad company whenever said road shall have been completed and the cars running to a depot within one-half mile
21 of the town plat of the town of Lynnville, Iowa, within the time required by law, and whenever the trustees of said township shall have certified that the terms have been complied with by the said railroad company according to a certified copy of the notices of election, which is hereto attached.

D. B. MENDENHALL,
B. F. HINES,
Clerks.
S. W. CASTOR,
R. P. RATLIFF,
E. H. BARTOW,
Judges.

Notice for Railroad Election.

Whereas a petition has been presented to the trustees of Lynn Grove township, Jasper county, Iowa, by one hundred and twenty freehold resident tax payers, being a majority of the freehold
22 tax payers of the said township, asking that the question of aiding by a five per cent. tax the construction of the New Sharon Coal Valley and Eastern railroad, to be within one-half mile of the town plat of the town of Lynnville, in said township, county, and State:

Now, therefore, notice is hereby given that on the 5th day of April, D. 1880, at the town of Lynnville, in said township, county, and State, a special election will be held for the purpose of voting upon the aiding in the construction of the New Sharon Coal Valley & Eastern railroad, by a five per cent. tax of the taxable property of said township, one-half to be collected the first year (1881) and one-half the following year (1882).

Said road to be fully completed and running to a depot within one-half mile of the town plat of the town of Lynnville, in
23 the above-mentioned township, and on the south side of the river, and connecting with any line now in operation or that may be built east of the town of Lynnville before the tax is due and collectible, and to be built within the time required by law; those favor said tax will have written or printed "For Taxation," those opposed to said tax, "Against Taxation."

Given under our hands, this 15th day of March, A. D. 1880.

S. W. CASTOR,
L. CONOVER,
R. P. RATLIFF,
Trustees of Lynn Grove Township, Jasper County, Iowa.

Attest:
D. B. MENDENHALL, *T'p Clerk.*

Now, to wit, on this 17th day of March, 1883, upon the
24 presentation of the above foregoing petition, therefore, and upon being advised in the premises, it is ordered that the injunction therein prayed for issue, but only after the giving of a bond by the plaintiff, conditioned as required by law, in the penalty of ($1,000.00) one thousand dollars, with sureties to be approved by the clerk.

W. R. LEWIS, *Judge.*

(Endorsed:) William R. Mathews *vs.* D. G. Winchell, treas., etc., *et al.* Circuit court. Petition in equity. Filed May 20, 1883. M. P. Doud, clerk. Blanchard & Williams, Winslow & Wilson.

25 *Motion to Require the Plaintiff to Divide and Number.*

In the Circuit Court of Iowa in and for Jasper County. April Term, 1883.

WM. R. MATHEWS *v.* D. G. WINCHELL, Treas., *et al.*

Now come the defendants and move the court to require the plaintiff to separate into paragraphs the several causes of action set out in his petition, and to divide and number the several divisions of his petition.

R. A. SANKEY &
A. K. CAMPBELL,
For Def'ts.

(Endorsed:) Wm. R. Mathews *vs.* D. G. Winchell *et al.* Motion to require the plaintiff to divide and number the several causes of action. Filed Apr. 24, 1883. M. P. Doud, clerk.

26 STATE OF IOWA, } *ss:*
Jasper County, }

B. C. Ward, being duly sworn, says: That he is editor and proprietor of the Prairie City News, a weekly newspaper of general circulation, printed at Prairie City, in said county, and that the notice hereto attached was published in said newspaper for 4 successive weeks, to wit, March 23rd, 30th, and April 6th, 13th, 1883; and further saith not.

B. C. WARD.

Subscribed in my presence and sworn to before me by B. C. Ward, this 17th day of April, 1883.

[SEAL.] W. G. CLEMENTS,
Notary Public.

Publication fee ------	$6 00
Certificate ----------	25
Total --------	$6 25

27 STATE OF IOWA, } *ss:*
Jasper County, }

To D. G. Winchell, treasurer of Jasper county, Iowa; The New Sharon Coal Valley and Eastern Railroad Company; The Chicago, Burlington & Pacific Railroad Company; A. Sully, Levi Conover, R. P. Ratliff, and S. W. Castor, trustees Lynn Grove Township:

You are hereby notified that there is now on file in the office of the clerk of the circuit court of Jasper county, Iowa, the petition of William R. Mathews, claiming of you that a certain tax alleged to have been voted in Lynn Grove township in aid of the New Sharon Coal Valley & Eastern Railroad Company is illegal and void for various reasons stated in said petition, and praying that a
28 writ of injunction may issue restraining the treasurer from

collecting the same or paying any sums collected over to the railroad company, and that the township trustees be enjoined from certifying that the railroad company have complied with the stipulations and conditions stated in the notice of election under which the tax was voted, and other relief.

You are also notified that a writ of injunction has issued as prayed, and unless you appear on or before noon of the second day of the next term of said circuit court, to be commenced on the 4th Monday in April, A. D. 1883, the same being the 23 day of said month and year, and make defense to said claim, your default will be entered and a judgment and decree rendered against
29 you as prayed for in said petition, and for costs of suit.

WINSLOW & WILSON AND
BLANCHARD & WILLIAMS,
Attorneys for Plaintiff.

(Endorsed:) Filed Apr. 18, 1883. M. P. Doud, clerk.

30 *Writ of Injunction.*

The State of Iowa to Levi Conover, R. P. Ratliff, S. W. Castor, trustees of Lynn Grove township, and D. G. Winchell, treasurer of Jasper county, Iowa, defendants:

Whereas Wm. R. Mathews, as plaintiff, has this day filed in the office of the clerk of the circuit court of the State of Iowa in and for Jasper county a petition, duly sworn to, making D. G. Winchell, treasurer, the N. S. C. V. & E. R. R. Co., the C., B. & P. R. R. Co., A, Sully & Levi Conover, R. P. Ratcliff, & S. W. Castor, trustees of Lynn Grove township, defendants therein, and praying that the said trustees may be restrained from certifying that the defendant R. R. Co. has complied with the conditions and stipulations contained in the election notice recited in the petition; that the defendant,
31 D. G. Winchell, treasurer, be restrained from proceeding to collect said tax that may have been collected thereunder.

And whereas the Honorable W. R. Lewis, judge of the circuit court of the State of Iowa in and for Jasper county, has this day made an order allowing said writ of injunction to issue upon the filing of a bond, with sureties, pursuant to said order; and whereas said order has been complied with and said bond filed and sureties approved:

Now, therefore, you, the said trustees, defendants as aforesaid, are hereby strictly enjoined and restrained from certifying that the defendant railroad company has complied with the conditions & stipulations contained in the election notice recited in the petition; and you, the defendant D. G. Winchell, treasurer, are hereby re-
32 strained from proceeding to collect the tax levied in said township in aid of the said railroad or paying over to the defendant railroad company, or its assigns, any of said tax that may have been collected thereunder until the further order of our circuit court in the premise, and this injunction you must strictly observe under the penalties of the law.

Witness M. P. Doud, clerk of said court, with the seal thereof hereto affixed, this 20th day of March, 1883.

[SEAL.]

M. P. DOUD,
Clerk Circuit Court.

STATE OF IOWA, }
Jasper County, } *ss:*

I received the within writ of injunction on the 20th day
33 of March, 1883, and served the same on D. G. Winchell, treasurer of Jasper county, Iowa, by reading the within writ to S. H. Galusha, deputy treasurer of Jasper county, Iowa, and delivering to him a copy of the same, in Newton, Jasper county, Iowa; and on R. P. Ratcliff, one of the trustees of Lynn Grove township, Jasper county, Iowa, on the 20th day of March, 1883; and on E. C. Ogg, secretary of the C., B. & P. R. R. Co., by reading and delivering to him a copy of the same on the 20th day of March, 1883, in Newton township, Jasper county, Iowa; and on S. W. Castor and Levi Conover, trustees of Lynn Grove township, Jasper county, Iowa, on the 21st day of March, 1883, in Lynn Grove township, Jasper county, Iowa, by reading the within writ and delivering to each a copy of the same.

J. L. HUNTER,
Sheriff of Jasper County, Iowa.

34 Fees:

Service	$2 00
Mileage	2 10
Copies	3 00
	$7 10

(Endorsed:) Writ of injunction. Circuit court. Wm. R. Mathews *vs.* Levi Conover *et al.*, trustees, D. G. Winchell, treasurer, *et al.* Filed Apr. 14, 1883. M. P. Doud, clerk. Winslow & Wilson, attorneys for plaintiff.

35 In the Circuit Court of Iowa in and for Jasper County.
April Term, A. D. 1883.

WILLIAM R. MATHEWS

v.

D. G. WINCHELL, Treasurer of Jasper County, Iowa; THE NEW Sharon Coal Valley & Eastern Railroad Company; The Chicago, Burlington & Pacific Railroad Company; A. Sully & Levi Conover, R. P. Ratliff & S. W. Castor, Trustees of Lynn Grove Township.

I, William R. Mathews, being duly sworn, say: That I am the plaintiff in this suit, and that personal service of the notice of the pendency of this action cannot be made upon the defendant, A. Sully, in the State of Iowa, he, the said A. Sully, being a non-resident
36 of said State.

WILLIAM R. MATHEWS.

Subscribed and sworn to by William R. Mathews, before me, and in my presence, this 16th day of March, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

(Endorsed:) William R. Mathews *vs.* D. G. Winchell, treas., etc., *et al.* Circuit court. Affidavit of non-residence and for publication of notice. Filed Mar. 20, 1883. M. P. Doud, clerk. Winslow & Wilson.

37 *Original Notice.*

STATE OF IOWA, } ss:
Jasper County, }

To D. G. Winchell, treasurer Jasper county, Iowa; The New Sharon Coal Valley and Eastern Railroad Company; The Chicago, Burlington and Pacific Railroad Company; A Sully, and Levi Conover, R. P. Ratliff, and S. W. Castor, trustees of Lynn Grove township:

You are hereby notified that there is now on file in the office of the clerk of the circuit court of Jasper county, Iowa, the petition of William R. Mathews, claiming of you that a certain tax alleged to have been voted in Lynn Grove township in aid of the New Sharon Coal Valley and Eastern Railroad Company is illegal and void for various reasons stated in said petition, and praying
38 that a writ of injunction may issue restraining the treasurer from collecting the same or paying any sums collected over to the railroad company, and that the township trustees be enjoined from certifying that the railroad company have complied with the stipulations and conditions stated in the notice of election under which the tax was voted, and other relief.

You are also notified that a writ of injunction was issued as prayed, and unless you appear on or before noon of the second day of the next term of said circuit court, to be commenced on the fourth Monday in April, A. D. 1883, the same being the 23rd day of said month and year, and make defense to said claim, your default will be entered, and a judgment and decree rendered against you
39 as prayed for in said petition, and for cost of suit.

WINSLOW & WILSON &
BLANCHARD & WILLIAMS,
Att'ys for Pl't'ffs.

STATE OF IOWA, } ss:
Jasper County, }

Received the within notice March 20th, 1883, and I hereby certify that I served the same personally on the 20th day of March, 1883, by reading the same to the within-named R. P. Ratcliff, one of the trustees Lynn Grove t'w'p, Jasper county, and E. C. Ogg, secretary of C., B. & P. R. R. Co., personally, and by delivering to him personally a copy of the within notice in Newton t'w'p, Jasper county, Iowa.

Received the within notice March the 20th, 1883, and I certify that I could not find the within-named D. G. Winchell in
40 Jasper county, that being the county of his residence, and therefore served the notice on him on the 20th of March, 1883, by reading the same to and delivering a copy thereof to S. H. Galusha, deputy treasurer of Jasper county, Iowa, at the defendant's usual place of business, in Newton, Iowa, said copy being left with S. H. Galusha, deputy treasurer of said county.

J. L. HUNTER,
Sheriff of Jasper County, Iowa.

(Endorsed:) Filed Apr. 14, 1883. M. P. Doud, clerk. I served the within notice on Levi Conover and S. W. Castor, trustees of Lynn Grove township, Jasper county, Iowa, by reading the within notice to each of within-named def'ts, and delivering to them a copy
41 of the same on the 21st day of March, 1883, in Lynn Grove township, Jasper county, Iowa. J. L. Hunter, sheriff Jasper county, Iowa. Original notice. Circuit court. William R. Mathews *vs.* D. G. Winchell, treas., *et al.* Fees: Service, $1.50; mileage, $2.20; copy, $1.00; total, $4.70. Winslow & Wilson, & Blanchard & Williams.

42 *Motion to Strike Petition for More Specific Statement, etc.*

In the Circuit Court of Iowa in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MATHEWS *v.* D. G. WINCHELL, Treasurer, *et al.*

Now come the defendants and move the court to strike out part of the petition herein, as follows:

1st. To strike out all of the first paragraph of the petition, commencing at the beginning of the second line of the second page with the words, "And he brings this action not only on his own behalf, etc.," to the end of said paragraph, for the reason that said
43 petition does not show any authority for the plaintiff to appear for and represent the other tax payers of Lynn Grove township.

Because the court has no jurisdiction to determine matters or bind parties not before the court.

Because persons not parties to litigation are not bound by the judgment of the court.

Because it is not shown that any other of the citizens of Lynn Grove township have such a common interest in the matters in litigation as to be entitled to be joined herein.

Because there is no sufficient averment in the petition to authorize the plaintiff to appear for any other person, or that any other person desires to join in this suit.

Because this part of said paragraph is immaterial and irrelevant.

44 2nd. To strike the 3rd paragraph of the petition, for the reason that the matters therein set out do not constitute a cause of action.

2d. Because the petition for the election is *res adjudicata*, the trustees having passed thereon, and their decision being final, unless reviewed in a direct proceeding.

3d. Because it is not charged that said "one or more persons" voted at the election either for or against the tax, or was present at the same.

3rd. To strike the 4th paragraph of the petition, for the reason that the statements therein contained do not constitute a cause of action.

2d. The irregularities claimed to exist in the certificate to the auditor cannot be attacked in a collateral proceeding.

45 3d. The board of supervisors having passed upon the sufficiency of said certificate, their action is final, unless reviewed in a direct proceeding.

4th. To strike out the fifth paragraph, for the reason that it contains no cause of action.

2d. Because the sufficiency of said certificate has been passed upon by the proper tribunal, and their finding can only be reviewed in a direct proceeding.

3rd. Because the making of the certificates is required to be done by the agent of the township and of plaintiff, and he cannot, in a court of equity, seek to avail himself of the mistakes or negligence of his own agents to the damage of the other party to the contract upon which the tax was voted.

46 5th. To the sixth paragraph, for the reason that no cause of action is stated in said paragraph, and the matters stated are immaterial and irrelevant.

2d. Because the plaintiff is estopped from making the objection that no sufficient description was contained in the notice of election of the line of road to be aided by the tax, having stood by and permitted the railroad company to build its road without protest or objection.

3d. Because the trustees have adjudicated upon the sufficiency of the petition and notice, and plaintiff cannot attack said adjudication in a collateral proceeding.

4th. Because the matters in said paragraph are *res adjudicata*.

47 6th. To strike the seventh paragraph, for the reason that it sets out no cause of action.

2d. Because said paragraph does not allege that the railway company did an illegal act in changing the name of the company, and because they were entitled to make such change by the statute.

3d. Because there is nothing in the notice on which the tax was voted preventing the railway company from disposing of its line of road, or that by reason thereof the plaintiff has been damaged.

4th. Because it is not alleged that said sale did or will prevent the railway company from complying fully with the terms of the contract on which the tax was voted.

7th. To strike the eighth paragraph, for the reason that said

48 alleged representations as to the location of the main line of the road, previous to the voting of the tax, does not constitute a representation respecting the line of the road which is binding

upon the company, or upon which the tax payer is authorized to rely.

2d. Because there is a written contract between the township and the railroad company upon which the tax was voted, and the written contract must determine the rights of the parties thereto.

3d. Because there is no allegation that the line of railway does not run as prescribed in the notice.

4th. Because all the matters alleged in said paragraph are immaterial and irrelevant.

8th. To strike the ninth paragraph, for the reason that said
49 paragraph does not set out wherein said railway is not completed; that the mere allegation that the road is unfinished is a conclusion, and not a statement of fact.

2d. Because by the terms upon which the tax was voted it only required the road to be built from New Sharon to Lynnville, and has nothing to do with the road from Newton to the Lynnville intersection.

3d. Because the things alleged to be wanting are not a part of the road, but betterments and improvements.

9th. To strike the tenth paragraph, for the reason that the allegations of said paragraph are immaterial and irrelevant and constitute no cause of action.

2d. Because the township trustees had jurisdiction of the petition passed thereon, and their decision cannot be assailed in a collateral proceeding.

50 3rd. Because it is shown affirmatively by said paragraph that the trustees did adjudicate the matter therein stated.

10th. To strike the twelfth paragraph, for the reason that no allegation or cause of action is stated against said trustees, and they are not proper parties to this action.

And defendants further say that if upon the hearing hereof the court should be of the opinion that some of the paragraphs in said petition should not be stricken out, then the defendants move the court for a more specific statement, as hereinafter set out:

1st. To set out specifically by what authority the plaintiff seeks to represent the remaining tax payers of Lynn Grove town-
51 ship, whether said authority is verbal or in writing, and, if in writing, to set out a copy thereof, and, if not in writing, by whom authorized, and the terms of said authority to set out what interest in common with plaintiff said persons authorizing him to appear for them have. To set out specifically the names of all parties for whom he is authorized to appear.

2nd. To set out specifically the names of the person or persons to whom a pledge was given by those who were circulating the petition and obtaining signatures thereto to call an election, and the name or names of the persons giving said pledges. To set out the name or names of all parties signing said petition to call an election who signed said petition because of receiving a pledge that their tax should be paid or cancelled if subsequently
52 voted, and the name or names of all parties making said pledges to said parties.

3rd. To set out specifically how and by whom the New Sharon Coal Valley and Eastern Railroad Company, to induce parties to sign their petition to submit to the question of aiding it by a tax upon said township, represented and promised that the main line should be built and located as stated in the notice, who were the parties making such representations, etc.; and to set out in what respect the line of road built differs from that named in the notice of election.

And the defendants move the court to modify or to dissolve the injunction herein issued, for the reasons—

1st. Because said petition does not state any facts author-
53 izing the interposition of a court of equity.

2nd. Because said petition does not allege any illegality in said tax; merely irregularities in the process of certification.

3rd. Because it is not shown by the bill that the plaintiff does not have an ample remedy at law.

4th. Because the plaintiff has a full and adequate remedy at law for the alleged grievances complained of.

5th. Because plaintiff has no authority to obtain an injunction for any person except himself.

6th. Because, having stood by and permitted the railroad company to build its road upon the faith of the tax, without protest or objection, he is now estopped from setting up irregularities or defects to said tax.

7th. Because said petition does not allege that plaintiff's
54 property is exempt from taxation.

8th. Because said petition does not allege fraud in the procurement of the tax, or on the levy thereof.

R. A. SANKEY &
A. K. CAMPBELL.

(Endorsed:) W. R. Mathews *vs.* D. G. Winchell, treas., *et al.* Motion to strike petition and for more specific statement, and to dissolve injunction. Filed Apr. 25, 1883. M. P. Doud, clerk.

55 *Motion to Strike.*

In the Circuit Court of Iowa, in and for Jasper County.

WM. R. MATHEWS *vs.* D. G. WINCHELL, Treas., *et al.*

1. Now comes defendant and moves the court to strike from amendment to petition division one—

Because it seeks to improperly join parties who have no common or general interest in the subject-matter of this suit.

Because it seeks to bring in as parties to this suit persons who have not yet made up their minds whether they want to be parties or not.

2. To strike out the last five lines of division one, beginning
56 with the words "not only for themselves."

Because it seeks to bring in parties not contemplated or provided for in law.

Because it fails to show any interest in the subject-matter of the suit by unknown parties, who may not now be citizens of the township, but for whom plaintiffs may be watching, waiting, and hoping in order that he may have more help in paying costs and attorneys' fees.

To strike out paragraph V, because it seeks to determine this cause on conditions not provided in the notice of election.

R. A. SANKEY &
A. K. CAMPBELL,
Att'ys for Def'ts.

(Endorsed:) Filed May 1, 1883. M. P. Doud, clerk.

57 *Amendment to Petition.*

In the Circuit Court of Iowa, in and for Jasper County. April Term, A. D. 1883.

W. R. MATHEWS *et al. v.* D. G. WINCHELL, Treas., *et al.*

I. By leave of court first had and obtained the plaintiff, amending his petition, makes the following persons co-plaintiffs and parties to this action, that is to say, E. H. Bartow, Alexander Smith, J. M. Rayburn, J. C. Hiatt, J. G. White, John Lang, Samuel Howell, Thomas Sherman, Phillip Dysart, B. J. Charles, J. K. Bufkin, Hugh Moody, M. H. Sopher, Andrew Bowen, J. P. Bump, Joseph Sylvester, William McNulty, W. H. Sylvester, D. M. Sylvester, J. E.
58 Kent, L. T. Sylvester, Dickson Sylvester, William Reiter, Aaron Symans, Robert Swan, Perry Moses, Lewis Dysart, C. Renaud, John Renaud, James Sage, V. B. Mayfield, M. L. Garner, M. F. Mathews, Albert Sloson, Henry Ballinger, J. W. Swan, A. R. Mathews, W. H. Butler, J. W. Rafferty, J. Ives, John Loy, J. B. Taylor, John Gray, D. D. Lawrence, Riley Nedrow, Eli Shults, C. E. Quire, Geo. B. Miller, A. White, Sr., J. B. Sparks, Wm. Swan, J. L. Eldridge, T. M. Sparks, Sr., J. R. Eldridge, S. T. Sparks, I. L. Haines, J. W. Howell, Samuel Creed, John Mayfield, Thomas Campbell, W. W. Dryden, Lilburn Macy, Wm. Quire, Alf. Ratliff, J. J. Mayo, Isaac Holmes, J. C. Butler, W. R. Howerton, Dennis Norton, V. Ludwick, M. B. Lunt, A. T. H. White, W. S. Phelps, Wm. M. Stallings, E. B. Ratcliff, Jabez Star, C. W. Star, ——— Star, Jerry Mendenhall, T. M. Sparks, Jr., E. J. Webb, Lynn White,
59 Isaac Garner, A. B. Taylor, Charles Johnson, Sarah Mendenhall, E. P. Mendenhall, Jacob Kitch, Sylvester Wymer, C. F. Renaud, Mary J. Renaud, Esther Mendenhall, Sarah Kitchen, Mary Mendenhall, Olive Mendenhall, E. B. Cox, John Rhine, S. C. Woodward, John P. Stallings, Jerry McIntosh, W. Wilson, James Woodward, D. F. Talbot, John Perfect, F. M. Perfect, Frank Woodward, A. Johnson, J. C. Hukill, J. Fleming, J. Sheely, A. A. McIntosh, Wm. Hart, M. Flannigan, Wm. Flannigan, J. R. Davis, Hannah Flaugh, W. H. Talbot, G. Byers, A. S. Hull, J. S. Sparks, David Crane, S. T. Sparks, ——— Vanderpool, W. B. Campbell, Isaac Stallings, J. W. Holmes, A. A. Ratcliff, G. W. Rhine, J. B. Forker,

C. C. Britan, D. C. Edmunds, F. T. Shroyer, Rebecca Mendenhall, Amanda Spain, Mary Bufkin, John Burton, Jeff. Burton, C. C. Burton, Isaac Dimmick, Jeff. Fanning, Isaac Farmer, B. D. Hungerford, J. W. Swan, Sr., W. H. Butler, A. R. Mathews, C. W. Mendenhall, Rebecca Harkett, J. J. Sparks, Henry Fairbrother, Jerry Shaffer, J. H. Sparks, J. V. Moore, J. R. Sparks, Lewis Sherman, Isaac Wilson, Asa Edwards, Elisha Mendenhall, Samuel Robertson, Wyatt White, E. C. Quaintance, N. Ludwick, Davis Norton, T. J. Canon, J. R. Canon, P. H. Heston, Oscar Fairbrother, Benjamin Swan, Robert Meridith, J. W. Holmes, E. Norton, Isaac Whitney, A. J. Elliott, A. R. Smith, Robert Ryan, Andrew Miller, John Miller, H. H. Whitlock, Mary Arnold, D. Mendenhall, Eli Jay, Wm. Evans, and they represent and show to the court that they, and each one of them, are tax payers in the township of Lynn Grove, Jasper county, Iowa, and were such at the times and happening of the several events, matters, and things stated in the original petition on file herein.

That at said times and now they were and are the owners in severalty of property which was and is liable to taxation, and that the tax-books show an attempted levy of a tax against them and each of them, as in said original petition recited and set out, and each allegation and averment therein is now by these plaintiffs adopted, and, with the amendments hereinafter made, states the cause and complaint of these plaintiffs, your petitioners.

Your petitioners further show that while the property owned by them is in severalty, yet, inasmuch as the tax herein alleged and set out is null, void, and of no effect, and the alleged attempted assessment and levy is wholly illegal and void, each of your several petitioners are alike in the same manner affected thereby; and to the end that a multiplicity of suits may be avoided and complete justice be done, they jointly bring, prosecute, and maintain this suit, not only for themselves, but for all others who may on account of the grievances alleged seek the same relief upon the same common cause of action.

II. Your petitioners further represent and show to the court, by way of amendment to the fifth paragraph in the original petition, that the said paper therein referred to conveyed and gave to the auditor of the county no authority whatever to extend the tax upon the tax-books of the county, for the further reason that the same sets out and states that the tax voted was to be paid to the "railroad company whenever said road shall have been completed and the cars running to a depot within one-half mile of the town plat of the town of Lynnville, Iowa, within the time required by law, and whenever the trustees of said township shall have certified that the terms had been completed with by the said railroad company."

Which said statement has no foundation in fact, no such stipulation or condition being found or contained in the notice of election, and no such terms and conditions were made and imposed, but the same was an entire and complete addition to matters contained in the said notice.

III. Your petitioners further represent and show to the court by way of amendment to sixth paragraph in the original petition, that notice of election therein referred to was fatally defective, and conferred no jurisdiction, right, or authority to levy a tax or make an assessment upon the property of your petitioners, and the attempt to do so was illegal and without warrant of law, for the further reason that said notice does not state the amount of work required to be completed before the tax shall be paid to the railroad company, and fails to state when the same shall be performed, and said notice fails to state to what point the road shall be fully
65 completed, all of which matters and things are required as conditions precedent, and the failure so to do and the omissions to comply with the said statutory requirements rendered not only the election held thereunder absolutely void, but all subsequent proceedings based thereon.

IV. Your petitioners further represent and show to the court, by way of amendment to paragraph nine of the original petition, that said spur, as therein alleged, as well as the main line extending from the junction of said spur to and with the said main line to a point where the same connects with a line operating a road lying east of the town of Lynnville, was not fully completed at the time
66 of the sale and transfer of said road to the Central railroad of Iowa as illegal and is not now fully completed, but the said road is now unballasted, without wood and water stations, coal shutes, ticket offices, and agents, cattle guards, road crossings, and other essential and necessary appliances for its operation and for the convenience and use of those having business upon and over its road.

V. Your petitioners further represent and show to the court that at the time of the procuring of the signatures to the petition asking that an election be called to vote upon the question of aiding said railroad company, the said company, through its agents and officers, not only in private but in public speeches, represented and
67 disclosed that the said road was to be a through main-line road, and the exact route was by the president of the company and other officers and agents of said company pointed and shown by the said president, and which route brought the said road to the town of Lynnville as aforesaid, and was by the means and persons before alleged assured to the tax payers and voters to be a direct and main-line railroad to the said town as aforesaid, which representations and assurances so given and made as aforesaid were believed and relied upon, and large numbers were induced to and did sign said petition on account thereof, and at the election did vote for the said proposed tax upon the faith and credit of such representations and assurances so given as aforesaid; that after the change
68 was made in the name of the corporation, as stated, a new board of directors was elected and a change was made in the route, and it was determined to build no main line to or within one-half mile of the town plat of the town of Lynnville, as had been represented and agreed, and as your petitioners aver is the fair and reasonable intendment and meaning of the word used in the notice of

election, but that the road should be erected and built upon another and different route than the one which the said president of the company had assured them as aforesaid would be done, and which route brought the road direct to the said town of Lynnville, and which route so last determined upon would not come to said town or within a half mile thereof; that the road was then built so far
69 as it has been completed, as alleged in the original petition, and to secure, if possible, the collection of the tax that had been voted, the said railroad company then proceeded to erect and construct a spur to the town, as before alleged, and such spur is the only railroad attempted to be erected by the said railroad company.

Your petitioners further represent and show to the court that had it been known that the road would not have been built on the line and route shown by the president of the company as alleged, and had it been known that the main line of said road would not be built to the town as stated in the notice, the petition could not have been obtained for an election or the tax voted thereat.

V. Your petitioners further represent and show to the
70 court that by the articles of incorporation of the New Sharon Coal Valley and Eastern railroad the said corporation was to erect and build a road from some point in Iowa southeasterly from Newton, by the way of New Sharon, to the Mississippi river; that after the tax was voted, as before alleged, the route of the road was materially changed.

That is to say, a road was partially built from Newton to New Sharon, and the route wholly abandoned, changed, and altered from that point to Oskaloosa, a distance of about eighteen miles, the said corporation for that distance using the road-bed and track of the Central railway of Iowa, a corporation then, and for years before the said tax was voted, operating a railway line from New Sharon
71 to Oskaloosa, Iowa; that by reason of said change and alteration in the route and line of the said company all taxes voted in its aid have been waived, released, and are not due or collectible.

Wherefore your petitioners pray that this suit may be continued in their names and in their behalf, and in behalf of all the other tax payers in said township who may hereafter join with them.

That the injunction heretofore granted may be continued in all respects except as now modified, and that all the relief prayed in the original petition be granted, and such other and further relief as may be equitable under the facts stated.

WINSLOW, WILSON & L. C. BLANCHARD,
Att'ys for Pl'ffs.

STATE OF IOWA, }
Jasper County, } *ss:*

72 I, William R. Mathews, being sworn, say: That I am one of the plaintiffs, and that the matters and things stated in this amendment to the original petition are true, as I verily believe.

W. R. MATHEWS.

Subscribed and sworn to by William R. Mathews, this 30th day of April, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

(Endorsed:) William R. Mathews *et al. vs.* D. G. Winchell, treas., etc., *et al.* Circuit court. Amendment to petition. Filed Apr. 30, 1883. M. P. Doud, clerk. L. C. Blanchard, Winslow & Wilson.

73 *Motion.*

In the Circuit Court of Iowa, in and for Jasper County.

WM. MATHEWS *et al. v.* D. G. WINCHELL *et al.*

Defendants move the court to modify the injunction herein wherein it enjoins the treasurer of said county from paying out to the railroad company any taxes paid into the treasury of the county—

1. Because parties to the suit can have no interest nor right in controlling the taxes of other tax payers who may desire that the railroad Co. have the benefit of their taxes.

2. Because parties to this suit will become liable, without any corresponding benefit, in the event the tax is declared valid,
74 for the penalty and interest which would otherwise accrue on taxes paid in and held in the treasury by this injunction.

3. Because these parties do not sue in a representative capacity, representing all the tax payers, but for themselves alone, and are only permitted to join to save multiplicity of suits.

4. Because the rights of the parties herein can be fully determined without being connected in any manner with the taxes of other parties.

5. Because this court has no jurisdiction in this cause of any taxes paid in or to be paid in, except the taxes of the parties to this suit, and can have no right to extend its injunction over the taxes of parties not in court.

II.

75 Defendants move the court to so modify the injunction that the treasurer of said county shall be allowed to collect the taxes of all persons not party to this suit as other taxes are collected, for the above reasons.

III.

Defendants move the court to increase the bond herein to ten thousand dollars, because no less bond would be adequate security.

R. A. SANKEY & A. K. CAMPBELL,
Att'ys for Def'ts.

(Endorsed:) Filed May 4, 1883. M. P. Doud, clerk.

76 *Answer.*

In the Circuit Court of Iowa, in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MATHEWS *v.* D. G. WINCHELL *et al.*

Now come the defendants in the above-entitled cause, and for answer to the petition and amended petition herein say they deny each and every allegation in said petition and amended petition contained not hereinafter specifically admitted.

I. Admit that plaintiffs are citizens and tax payers for the township of Lynn Grove, but deny that they have such a common or general interest as will permit them to unite in the same action.

77 Admit that on the 8th day of April, A. D. 1880, after due and legal notice, a tax of five per cent. was voted by the voters of said township on the taxable property of said Lynn Grove T'p, to aid in the construction of the New Sharon Coal Valley and Eastern railroad.

Admit that the notice for said special election was based upon a certain paper purporting to be the petition of a majority of the freehold tax payers resident in said T'p, and that it not only purported to be, but was, a petition in fact and in due form.

And defendants aver that the sufficiency of said petition, and all other matters dependent thereon, were fully adjudicated by the defendants, the trustees of said township, and no appeal or other

78 direct proceeding was had to contest the action of said trustees in passing upon said petition, and defendants therefore allege that all of said matters set out in the third paragraph of the petition have been fully adjudicated and cannot be attacked in this collateral proceeding.

Admit that a certificate signed by both the clerks and judges of the special election held in Lynn Grove T'p was forwarded to the auditor of Jasper county as required by law.

And that after a levy of said tax by the board of supervisors the said five per cent. tax was extended on the tax lists of said T'p, and that said tax lists have been placed in the hands of the county treasurer, with the other taxes of said township contained in the same list.

Admit that said certificate does not contain the various

79 clauses contained in the notice as fully as contained in the notice, but avers that the same matters are contained in each, and that the same was intended to meet the requirements of the statute for said certificates.

Admit that said five per cent. tax has been placed upon the tax-books, and aver that the same is legally and properly there.

Admit that the name of the New Sharon Coal Valley and Eastern Railroad Company has been changed to the Chicago, Burlington and Pacific Railroad Company, and that said railroad company has built its line of road from New Sharon, Iowa, to Lynnville, and also to Newton, Iowa.

Admit that the defendant, A. Sully, claims to have an interest in said special tax.

80 Admit that the defendants, Levi Conover, R. P. Ratliff, and S. W. Castor, are the trustees of Lynn Grove T'p, and that they have been asked to certify said tax, and refused so to do.

II. And as to all other matters contained in said petition and amendment thereto the defendants deny each and all of them, and specially deny that the New Sharon Coal Valley and Eastern Railroad Company, to induce parties to sign their petition to submit to a vote the question of aiding it by attacks upon said township, and afterwards to aid in securing votes at the election, "made any representations whatever or any promises to the main line of said road;" that said company, as well as the citizens of Lynn Grove T'p,

81 relied upon the terms of the notice as defining the contract between them; deny each and every other allegation in the eighth paragraph of the petition.

They specially deny that the railroad has not been completed, or that at any point it is in an unsafe or uncompleted condition, and aver that the said road was constructed and in operation from the winter or spring of 1882, and is still in operation.

Specially deny that the certificate referred to in the second paragraph of the amendment to the petition did not confer authority to levy and extend the tax, or that the conditions contained in said certificate are not embraced in the notice.

Specially deny that the notice referred to in the third paragraph of the amendment is defective, or is defective at all,

82 and conferred no jurisdiction, right, or authority to levy the tax, and fails to state the amount of work required to be completed before the tax shall be paid, or to state where the same shall be done; and defendants aver that said notice and its sufficiency has been duly passed upon by the trustees of said Lynn Grove township, and their action thereon has never been appealed from or attacked in any direct proceeding, and that said notice is, therefore, *res adjudicata*, and cannot be attacked in this collateral proceeding.

Specially deny that the road from Lynnville to New Sharon is not fully completed.

Specially deny each and all of the allegations of the fifth paragraph of the amendment to the petition, and avers that at the said

83 time of voting the tax in Lynn Grove township no survey of a line of road had been made or any route located, and no claim was made by any party of such location, or any change took place in the location of such route.

Specially deny that any change in the line of the railroad took place after the tax of Lynn Grove had been voted that in any way or manner affected the rights or interests of the tax payers of Lynn Grove t'w'p, or of the contract contained in the notice of election.

III. Defendants, further answering, say that prior to April 8th, A. D. 1880, the citizens of Lynn Grove township, in Jasper county, Ia., being desirous of securing a railway, entered into nego-

84 tiations with the New Sharon Coal Valley and Eastern Railroad Co. to build a line of road from the town of Lynnville,

in said township, easterly or southeasterly to a connection with the Central Iowa railway.

That thereupon, and in pursuance of such negotiation, a special election was held on the 8th day of April, A. D. 1880, in said Lynn Grove township, and a tax of five per cent. upon the assessed valuation of said township was voted by the voters of said township.

That said tax was voted upon the written representations contained in the notice for said special election, and upon no other.

That the express terms and conditions, as contained in said notice, were, that—

"Said road to be fully completed, and running to a depot
85 within one-half mile of the town plat of the town of Lynnville, in the above-mentioned township, and on the south side of the river, and connecting with any line now in operation, or that may be built, east of the town of Lynnville, before the tax is due and collectible, and to be built within the time required by law."

A copy of which said notice of election is hereto attached and marked Exhibit "A," and made a part hereof.

That in accordance with the terms of said notice, and within the time therein prescribed, the New Sharon Coal Valley and Eastern Railroad Company commenced the building of a line of road from New Sharon to Lynnville, and built the same from a connection with the Central Iowa at New Sharon, northwesterly to the town of Lynnville, and established a depot at said town.

86 That in each and every respect the said railroad company complied with their part of said contract.

That said road as built runs to a depot within one-half mile of the town plat of the town of Lynnville, and on the south side of the river, and connects with a line now in operation east of the town of Lynnville, and that said road was built within the time required by law, and is now, and has been, in constant operation for the past year.

Wherefore defendants aver that no cause of action exists on the part of plaintiffs.

IV. Defendants, further answering, say that at the annual meeting of the stockholders of the New Sharon Coal Valley and Eastern Railroad Co., held in December, A. D. 1881, the name of said
87 corporation was changed to the Chicago, Burlington and Pacific Railroad Company, as provided by section 1273 of the Code of 1873 of Iowa, and that ever since said date said corporation has been known by the latter name.

That in May, A. D. 1882, said corporation sold its line of road to the Central Iowa railway, but that said sale was upon the express terms and conditions that said Chicago, Burlington and Pacific Railroad Co. should complete its road; that in pursuance of said contract said Chicago, Burlington and Pacific Railroad Co. have completed their line of road from New Sharon to Lynnville and to Newton, Iowa, and from Oskaloosa to the west bank of the Mississippi river, opposite Keithsburg, Illinois.

That said Chicago, Burlington and Pacific Railroad Co. sold

88 nothing but the line of railway; that it is still in existence, and has other property aside from said line of road, and is able and willing to perform its part of any and all contracts it has undertaken; that said company has made provision for the transfer of stock to those who present their tax receipts, as provided by law, and upon the presentation of such tax receipts said stock will be turned over to those entitled thereto under the statute.

V. Defendants, further answering, say that the plaintiffs well knew that the said railroad company was expending their money in building a line of road from New Sharon to Lynnville on the faith of the tax that had been voted in Lynn Grove township; that they stood by and permitted said company to expend a large sum of money—much more than the tax of said township—in building said
89 road, and made no protest or objection thereto; but, on the contrary, by their acts led said railroad company to believe that there would be no objection made to the payment of said tax, until the road was built and said company had their money invested.

And defendants aver that by reason of the foregoing the plaintiffs are barred and estopped from now setting up any defence to the payment of said tax.

VI. Defendants, further answering, and by way of cross-demand herein, ask that if upon the final hearing hereof the court should be of the opinion that the certificate forwarded to the auditor by the clerks and judges of the special election voting the tax in aid of the New Sharon Coal Valley and Eastern Railroad Co.
90 is insufficient to authorize the board of supervisors to make a valid levy thereon, or for the auditor to extend the same on the tax-lists, that thereupon this court order the township clerk of Lynn Grove township to make such additional certificate as may be necessary to cure such irregularity, and file the same with the auditor, to the end that said tax may be properly extended, a copy of which said certificate is hereto attached, marked Exhibit "B," and made a part hereof.

Wherefore and by reason of the foregoing the defendants pray the court that upon the final hearing hereof the injunction herein issued be dissolved, that the treasurer be directed to proceed with the collection of the said tax voted in aid of the New Sharon Coal
91 Valley and Eastern Railroad Company, and that the defendants have judgment against the plaintiffs for the costs of this action.

A. K. CAMPBELL &
R. A. SANKEY,
Att'ys for Def'ts.

STATE OF IOWA, }
Jasper County, } *ss:*

I, S. R. Oldaker, being duly sworn, upon oath state that I have heard the foregoing answer read, and know the contents thereof, and that the several allegations therein contained are true, as I verily believe.

S. R. OLDAKER.

Subscribed and sworn to before me and in my presence by S. R. Oldaker, this 8th day of May, A. D. 1883.

[SEAL.] J. M. CLEMENTS,
Notary Public.

92 EXHIBIT "A."

Notice for Railroad Election.

Whereas a petition has been presented to the trustees of Lynn Grove township, Jasper county, Iowa, by one hundred and twenty freehold resident tax payers, being a majority of the freehold tax payers of the said township, asking that the question of aiding by a five per cent. tax the construction of the New Sharon Coal Valley and Eastern railroad to within one-half mile of the town plat of the town of Lynnville, in said township, county, and State:

Now, therefore, notice is hereby given that on the 8 day of April, A. D. 1880, at the town of Lynnville, in said township, county, and State, a special election will be held for the purpose of voting
93 upon the aiding in the construction of the New Sharon Coal Valley and Easteen R. R. by 5 per cent. tax of the taxable property of said township, one-half to be collected the first year (1881), and one-half the following year (1882), said road to be fully completed and running to a depot within one-half mile of the town plat of the town of Lynnville, in the above-mentioned township, and on the south side of the river, and connecting with any line now in operation, or that may be built east of the town of Lynnville before the tax is due and collectible, and to be built within the time required by law. Those who favor said tax will have written or printed on their ballots "For Taxation;" those opposed to said tax, "Against Taxation."

94 Given under our hands, this 15th day of March, A. D. 1880.

S. W. CASTOR,
L. CONOVER,
R. P. RATLIFF,
Trustees of Lynn Grove Township, Jasper County, Iowa.

Attest:
D. B. MENDENHALL, *T'w'p Clerk.*

EXHIBIT "B."

To the county auditor, Jasper county, Iowa:

At a special election held at Lynnville, Lynn Grove township, State of Iowa, on the 8th day of April, 1880, for the purpose of voting upon the question of aiding by a five per cent. tax of the taxable property of said township in the construction of the New Sharon Coal Valley and Eastern railroad, there were two hundred
95 and ninety-five votes cast for or against said tax, as follows, to wit:

For taxation, 151.
Against taxation, 144.

Two and one-half per cent. of said tax to be collected in the year 1881, and two and one-half per cent. in the year 1882, and to be paid to the railroad company whenever said road shall have been completed and the cars running to a depot within one-half mile of the town plat of the town of Lynnville, Iowa, within the time required by law, and whenever the trustees of said township shall have certified that the terms have been complied with by the said railroad company according to a certified copy of the notice of election, which is hereto attached.

S. W. CASTOR,
R. P. RATLIFF,
E. H. BARTOW,
Judges.

96 D. B. MENDENHALL,
B. F. HINES,
Clerks.

(Endorsed:) W. R. Mathews *v.* D. G. Winchell *et al.* Answer. Filed May 9, 1883. M. P. Doud, clerk.

97 *Amendment to Answer.*

STATE OF IOWA, } ss:
Jasper County, }

In the Circuit Court of Iowa in and for Jasper County. November vember Term, A. D. 1883.

W. R. MATHEWS *et al. v.* D. G. WINCHELL, Treasurer, *et al.*

Now come The defendants, The Chicago, Burlington and Pacific Railroad Company and Alfred Sully, and, by leave of court first obtained, file this their amendment to the original answer herein, and say:

I. They ask to amend the original answer in this cause so as to show that the same applies to and is only for the defendants,

98 The New Sharon Coal Valley and Eastern Railroad Company, now the Chicago, Burlington and Pacific Railroad Company, and Alfred Sully.

That no appearance has been made for the defendants, D. G. Winchell, Levi Conover, R. P. Ratliff, and S. W. Castor, in this cause, and that each of said parties decline to appear, or permit the attorneys for the railroad company and Alfred Sully to appear or answer them.

That defendant Winchell is a mere nominal party by virtue of his official position as treasurer of Jasper county, and he has no actual interest in the collection of the tax sought to be enjoined by the plaintiffs, and is in collusion with the plaintiffs for the purpose of defeating the collection of said tax, and by reason thereof refuses to appear or defend herein.

That the defendants, Levi Conover, R. P. Ratliff, and S.

99 S. Castor, are the trustees of Lynn Grove township, and in the event of the collection of the tax sought to be declared in-

valid in this action have a portion of said tax to pay, and their interest in defeating the collection of the tax is mutual with the plaintiffs.

That the defendants to this answer are informed and believe the same to be true; that prior to the commencement of this action the said Levi Conover, R. P. Ratliff, and S. W. Castor had entered into an agreement with the plaintiffs in this suit to assist in defeating the collection of the tax, which is sought to be declared invalid in this action, and had pledged themselves to refuse to certify that the tax had been earned by the railroad company, or take any steps in relation to authorizing the railroad company, or its assignee, to
100 receive said tax, and had joined in an agreement with plaintiffs, whereby each of the parties to said agreement are to pay a certain per cent. of the amount of their individual railroad tax into a common fund, to employ attorneys and secure testimony to resist the collection of said tax, and to commence and prosecute proceédings to have said tax declared invalid and uncollectible, and have theratened to certify said tax as being earned as provided by law, unless the parties having signed said agreement aforesaid would come forward and pay up the amount called for by the committee, who have said matter of looking after the litigation herein, in charge, in order that said litigation may proceed, and that said defendant
101 Ratliff is one of said committee and active members thereof.

That defendants have learned that said agreement is in writing, but are unable to set out a copy thereof because said agreement is in the hands of the plaintiffs, and that these matters have come to the knowledge of these defendants since the last term of this court.

Wherefore these defendants allege that said trustees are in collusion with the plaintiffs to defraud the defendant Sully out of the said railroad tax, and because of such collusion refuse to appear and defend this action, and defendants say their rights herein ought in no manner to be prejudiced by the failure of said trustees to perform their duty.

II. Defendants, further answering, say they affirm and repeat all of the denials, statements, and allegations of the former
102 answer, and explicitly deny that any person was authorized by the railroad company, or any of its officers or agents, to promise the abatement or cancellation of any person's tax, in case the same should be voted in Lynn Grove T'p, or that any such promise was made to any voter of said Lynn Grove township.

III. Defendants, further answering, say that in the year 1881 the construction of the railroad from a point on the Central Iowa railway in the village of New Sharon was commenced, and extended northwesterly through Lynn Grove township, as shown by the map attached to this answer, marked Exhibit "A," and made a part hereof, which said map is an exact diagram of the location of said road and the stations thereon.

103 That in the spring of 1882 said road was completed to Lynnville in Lynn Grove township, and on July 8th, 1882, said road was completed to Newton, Iowa.

That during its construction trains were run over said road, and that on August 18th, 1882, a general time card was published for the entire line from New Sharon to Newton, and on the same date a general schedule for freights was published, and that on and after said date regular daily trains have been run over said entire line, including Lynnville, and are still doing so, it being now a daily mail route.

That ever since the spring and summer of 1882 all of the freight and passengers offered along the line of said road to and from the different stations have been carried, and at all times since the
104 completion of said road has it carried and accommodated all the business offered to it.

That the route of said road through Lynn Grove township as built is the only practicable route of reaching the village of Lynnville, said village being situated on the North Skunk river bottom and contiguous bluffs; said bluffs averaging from one hundred to one hundred and twenty feet in height, and extending along the south and west edge of the bottom, distant from the river twenty to forty rods, and running almost parallel with the course of said river through said township.

That by reason of said bluffs and breaks the only practicable route of reaching Lynnville was as has been done by the railroad company, (and shown on Exhibit "A,") said road following the divide around to within the corporate limits of Lynnville, and accom-
105 modating more of the tax payers of said Lynn Grove township than if built on any other route.

IV. Defendants, further answering, say that in the year 1879 the organization known as the New Sharon Coal Valley and Eastern Railroad Company was organized and incorporated.

That it was organized at the village of New Sharon, in Mahaska county, Iowa, in the township adjoining that of Lynn Grove in Jasper county.

That the persons composing said organization were residents of the village of New Sharon and vicinity, well known to the tax payers of Lynn Grove township.

That all of the members of said organization were in very moderate financial circumstances and unable to build the lines of
106 road contemplated in their articles of incorporation, or any part thereof.

That at the time the tax was voted in Lynn Grove township, which is herein complained of, said railroad company did not have any line of road located or built, nor did it own any line of road.

That said company desired the tax of Lynn Grove township, which was the first tax ever voted to said company for the sole and express purpose of using it in connection with any subsequent taxes which might be procured for it in inducing capitalists to take hold of said enterprise and build a line of road from said village to New Sharon northwesterly through Lynn Grove township.

That all of said facts were well known to the tax payers of Lynn Grove township at and previous to the voting of the tax
107 complained of in this action; that each of said matters were

openly discussed by the voters of said township during the pendency of said election, and the principal opposition to the voting of said tax was based upon the inability of said railroad company to build any line of road, and the limited financial condition of its members and stockholders, and it was open and notorious that if the line of road provided in the notice of election was built that it would have to be done by some persons or company not then connected with said railroad organization.

That it was also well known to the tax payers of Lynn Grove township prior to the voting of said tax that if the same should be voted it was to be used as an inducement to get capitalists,
108 then strangers to said railroad company, to furnish the money necessary to build the road described in the notice for the election.

That at the time the road was commenced to be built from New Sharon to and through Lynn Grove township all of the foregoing facts were fully known to the plaintiffs and that the money was being furnished to construct said railroad upon the faith of said tax and in the expectation that the same would be paid when said road was constructed, to partially reimburse said parties for the money advanced in said construction.

That the plaintiffs, for the purpose of first obtaining the benefits of said railroad, purposely refrained from making any objection to the payment of such tax or any objection to the building of said road upon the faith of the same, but on the contrary aided
109 and encouraged the building of said road, the plaintiff Mathews assisting in furnishing depot grounds in said township for the road as built, and otherwise aiding and assisting in the same.

That no objection was made to the payment of said tax, or any irregularities claimed therein, until more than one hundred thousand dollars had been expended in constructing said road through said township and in building depots therein, and until said road had been completed and in operation for several months, and plaintiffs were assured of the permanent benefits and advantages of the same.

That said road was completed and put in operation in the summer of 1882, and in October, A. D. 1882, long after said tax had become due and payable, it was turned over and possession thereof
110 taken by the Central Iowa Railway Company, who have continued to operate it and are now doing so.

Wherefore and by reason of the foregoing these defendants say the plaintiffs are now estopped from setting up any defense to the payment of said tax, or from having the same declared invalid and non-collectible.

V. Defendants, further answering, say that the tax of Lynn Grove township which is sought to be defeated and cancelled in this action amounts to the sum of sixteen thousand ($16,000.00) dollars, and that this action is brought for the purpose of defeating the collection of the whole of said tax with the interest accrued thereon.

That the defendant, Alfred Sully, is the sole and exclusive owner of said tax, and has paid full value therefore, and that the

same has been duly assigned to him, as per the written assignment hereto attached, marked Exhibit "B," and made a part of this answer.

That said Sully furnished the money mentioned in said assignment to aid in constructing the line of railway from New Sharon to Newton, Iowa, on the faith and promise of the taxes voted along the line thereof without any knowledge of any objections existing to the payment of said tax, or of any of the allegations and statements set up and relied on in the petition herein to defeat said tax.

That prior to investing any money in the construction of said railroad said Sully and his copartners caused inquiries to be made, and examination of the records of the New Sharon Coal Valley and Eastern Railroad Company, for the purpose of determining what action said company had taken in reference to the tax of Lynn Grove and other townships which had voted taxes to the same company.

That all that said records disclosed respecting said tax was the following entry of February 10th, 1880, entered by H. J. Vail, secretary of said company, said entry being hereto attached, marked Exhibit "C," and made a part hereof.

That prior to accepting the assignment of said tax said Sully caused further examination to be made, without finding anything further in relation thereto.

That during the construction of said railroad, and while furnishing the money to construct the same, said Sully was several times in said Lynn Grove township and in communication with the citizens of the same, but no mention was made of any defect in the voting of said tax, or of any irregularities existing therein, nor any reason whatever stated why said tax should not and would not be paid.

That said road, as constructed through Lynn Grove township, runs adjacent to the farm of W. R. Mathews, the principal plaintiff herein, and the person who has been active in working up this litigation, and that said Mathews, instead of making any objection to the payment of said tax when the road was being constructed, or making known any of the allegations set out in his petition, actively aided and encouraged the building of said road, and assisted in furnishing the depot grounds therefor, and in inducing the defendant Sully and his copartners to invest their money in said work, knowing that said road was being built and money furnished on the faith of the payment of the said tax, and purposely refrained from making any objection to the payment of said tax until long after said road was completed and in operation.

And that said Sully had no knowledge of any objections existing to the payment of said tax until after the same had been assigned to him and until this suit was commenced.

Wherefore these defendants say that the plaintiffs are now barred and estopped from maintaining this action, and they pray that the same be dismissed, and that they have a decree dissolving the injunction in this cause, and for such other and further

equitable relief as to the court may seem just, and for costs of suit.

A. K. CAMPBELL &
R. A. SANKEY,
Att'ys for the R. R. Co. & Sully.

STATE OF IOWA, }
Jasper County, } *ss:*

I, S. C. Cook, being duly sworn, depose and say: That I have personal knowledge of all the matters set out in the foregoing amendment to the answer herein; that since the summer of 1881 I have been connected with the defendant, The Chicago, Burlington & Pacific Railroad Company, first as director, and, since December, 1881, as the president of said company; that I assisted in procuring the defendant Sully and others to furnish the money to build said
116. railroad, and assisted in building the same, and was present and assisted when the same was constructed through Lynn Grove township, and know that the tax of Lynn Grove township was held out to said Sully as an inducement to furnish money to construct the same, and made the examination of the records of said company referred to in this amendment; that I have read the foregoing amendment to the answer herein, and that the several allegations therein contained are true, as I verily believe.

S. C. COOK.

Subscribed and sworn to before me and in my presence by S. C. Cook, this 26th day of November, A. D. 1883.

[SEAL.] JOHN C. WILSON,
Notary Public in and for Jasper Co.

117 EXHIBIT "B."

Whereas the New Sharon Coal Valley and Eastern Railroad Company, for the purpose of securing the construction of its roadway, did, on the 8th day of June, A. D. 1881, make a contract with H. F. Stone, whereby said railroad company contracted with said Stone for the building of its roadway, and agreed, among other things, to pay said Stone, in cash, work, or material, an amount equal to a two per cent. tax on the assessed valuation of the property of the several townships through which said road is built; and

Whereas said Stone has complied with his part of said contract, and said railroad company, nor the Chicago, Burlington and Pacific Railroad Co., successor to the former railroad company,
118 have paid any portion of said sum so agreed to be paid; and

Whereas said H. F. Stone has requested the taxes voted in aid of the construction of the New Sharon Coal Valley and Eastern railroad and the Chicago, Burlington and Pacific railroad in the several townships along the line be assigned to Alfred Sully, of New York city, for money advanced by Mr. Sully to enable said Stone to fulfill his contract; and

Whereas said H. F. Stone has agreed if such assignment be made to accept the same in full payment of the two per cent. sum that was agreed to be paid him by the railroad company:

Now, therefore, in consideration of the foregoing the Chicago, Burlington and Pacific Railroad Company hereby sell, assign,
119 and transfer all of its right, title, and interest in and to the several taxes voted in aid of the construction of the New Sharon Coal Valley and Eastern railroad and the Chicago, Burlington and Pacific railroad in the townships of Newton and Lynn Grove, in Jasper county, Iowa, * * * to Alfred Sully, of the city of New York, in full payment of the sum agreed to be paid H. F. Stone in the contract with him of June 8th, A. D. 1881, and we hereby authorize said Sully to collect and receipt for said taxes as fully as could be done by the railroad company.

In witness whereof, we have hereunto set our hands and affixed the official seal of said railroad company this 1st day of February, A. D. 1883.

[SEAL] CHICAGO, BURLINGTON AND PACIFIC RAILROAD COMPANY,
By S. C. COOK, *Pres.*

Attest:
E. C. OGG, *Secretary.*

120 Assignment duly acknowledged before M. P. Doud, clerk district court Jasper county, Iowa.

EXHIBIT "C."

"OFFICE OF THE N. S. C. V. & E. R. R. Co.,
"NEW SHARON, IOWA.

"A full board met at the call of the president, who states that urgent requests had been presented him by numerous citizens of Lynn Grove township, Jasper county, Iowa to induce the company to allow the citizens of said township *of said township* to vote a five per cent. tax in aid of this company, and that said company extend their road into said township.

"After general discussion it was decided that the building of a northwest division was a feasible enterprise and a desirable feeder to the main line.

121 "Said division to be known as the Minnesota division of the New Sharon Coal Valley and Eastern railroad.

"President Morgan was then authorized to proceed as he thought best.

"H. J. VAIL, *Secretary.*"

February 10th, 1880.

(Endorsed:) W. R. Mathews *et al. v.* D. G. Winchell *et al.* Amendment to answer. Filed Nov. 26, 1883. M. P. Doud, clerk.

122 *Motion to Dissolve Injunction.*

STATE OF IOWA, } ss:
Jasper County, }

In the Circuit Court of Iowa in and for Jasper County. November Term, A. D. 1883.

WM. R. MATHEWS *et al. v.* D. G. WINCHELL *et al.*

Now come the defendants, The Chicago, Burlington & Pacific Railroad Company and Alfred Sully, and move the court to dissolve the temporary injunction heretofore issued in this cause, and for cause for such motion states:

1. That the petition and amendment do not state any legal ground for the interposition of a court of equity, nor do the
123 grounds stated authorize the issuing of a writ of injunction.

2. That the matters stated in the petition and amendment, in so far as they relate to the petition and notice for the special election, at which the tax herein complained of was voted, have been adjudicated by the township trustees, and no appeal or other proceeding provided by law has been taken for a review of their decision, and said matters are now *res adjudicata*, and cannot be reviewed in this proceeding.

3. That the certificate of the judges and clerks of said special election certifying the result of said election to the county auditor has been adjudicated by the board of supervisors and its
124 sufficiency been determined by them, and the tax levied, and no appeal or other proceeding has been taken from their decision upon the sufficiency of said certificate, and the levy of the tax and said matters are now *res adjudicata*, and cannot be attacked or reviewed in this action.

4. That the said petition and amendment charges only irregularities upon which the court was not authorized by law to order a temporary injunction to issue.

5. That the allegations of the petition and amendment are denied by the answer and amendment thereto.

6. That said temporary injunction seeks to restrain the trustees from certifying that the railroad company have earned the said tax, while the statute makes it the duty of said trustees to make
125 said certificate, if in their judgment said tax has been earned

7. The said injunction restrains persons not parties to this action from voluntarily paying their tax, or the treasurer from receiving the same, and so far said injunction is not authorized by law.

8. The plaintiffs, having stood by and permitted the road to be built upon the faith of said tax, without objection thereto, are now estopped from maintaining this action.

A. K. CAMPBELL &
R. A. SANKEY,
Att'ys for Def'ts herein.

(Endorsed:) Wm. R. Mathews *et al v.* D. G. Winchell *et al.* Motion to dissolve injunction. Filed Nov. 26, 1883. M. P. Doud, clerk.

126 *Motion to Suppress Depositions.*

In the Circuit Court of Iowa in and for Jasper County.

WM. R. MATHEWS *vs.* D. G. WINCHELL *et al.*

Now comes defendant and moves to suppress the depositions of Pierce Ratliff, Geo. Carson, C. H. Kramer, and exclude them from the evidence herein.

1. Because they are not rebutting and are taken as such at a time when defendant has no opportunity to explain or rebut the same.

2. Because they are immaterial and irrelevant to the case.

3. Because the notary before whom and by whom they
127 were taken is an attorney fighting cases similar to this in Mahaska county, against the defendant Alfred Sully herein, and is notoriously hostile to said defendant, as shown by affidavits hereto attached.

4. Moves to suppress and exclude from the evidence herein the deposition of L. B. Westbrook, because the same is not rebutting and is wholly irrelevant and immaterial, and was taken at such a time as to leave defendant no opportunity to explain or rebut the same.

R. A. SANKEY &
A. K. CAMPBELL,
Att'ys for Def'ts.

(Endorsed:) Wm. R. Mathews *v.* D. G. Winchell *et al.* Motion to suppress depositions. Filed Nov. 27, 1883. M. P. Doud, clerk.

128 In the Circuit Court of Iowa in and for Jasper County. November Term, 1883.

W. R. MATHEWS *et al. v.* D. G. WINCHELL *et al.*

STATE OF IOWA, }
Jasper County, } *ss:*

I, R. A. Sankey, being sworn, say that I am personally acquainted with Geo. C. Morgan, the notary public who took the depositions of Pierce Ratliff, Geo. Carson, & C. H. Kramer, filed in this cause on the — day of November, A. D. 1883.

That I personally know that said Geo. C. Morgan, at the time of taking said depositions, was a party plaintiff and also one of
129 the attorneys in a similar suit pending in the circuit court of Mahaska county, Iowa, to defeat the collection of a similar tax in Prairie township, Mahaska county, Iowa, wherein the railroad company and Alfred Sully are defendants, and which tax belongs to the defendant Sully.

And that said Morgan has been and is an active party in procuring evidence and in preparing said cause for trial, and has manifested a great desire to and interest in defeating said tax.

And that said Morgan was so engaged at the time of taking said depositions herein.

And that said Morgan has exhibited a great desire to defeat the

tax, and a great deal of antipathy against the defendants, the
130 railroad company and Alfred Sully, because of said tax.

R. A. SANKEY.

Subscribed and sworn to before me and in my presence by R. A. Sankey, this 27th day of November, A. D. 1883.

[SEAL.] JOHN C. WILSON,
Notary Pnblic.

131 *Affidavit.*

In the Circuit Court of Iowa in and for Jasper County. November Term, A. D. 1883.

WM. R. MATHEWS *et al. v.* D. G. WINCHELL, Treas., *et al.*

STATE OF IOWA, }
Jasper County, } *ss:*

H. S. Winslow, being sworn, says: That I am the att'y having the main charge of this cause for the plaintiffs, and have a personal knowledge of the matters hereinafter stated.

That the notary, Geo. C. Morgan, who took the depositions in this case sought to be excluded, and in relation to which the affidavit of R. A. Sankey has been filed, has no interest in this case,
132 has never been consulted with or advised in relation, and has no connection with the cause as att'y or otherwise.

H. S. WINSLOW.

Subscribed and sworn to by H. S. Winslow, this 26th day of November, A. D. 1883.

[SEAL.] M. P. DOUD, *Clerk.*

(Endorsed:) Wm. R. Mathews *et al. v.* D. G. Winchell, treas, etc., *et al.* Circuit court. Counter-affidavit. Filed Nov. 27, 1883. M. P. Doud, clerk.

133 *Replication.*

In the Circuit Court of Iowa in and for Jasper County. Nov. Term, A. D. 1883.

W. R. MATHEWS *et al. v.* D. G. WINCHELL, Treas., *et al.*

And now come the plaintiffs, and for a replication to the answer of the defendants as amended they say that they deny each and every affirmative allegation therein made and contained not hereinafter admitted, modified, or explained, and which allegations are inconsistent with or contradictory of the allegations made in the petition.

That as to whether the defendant Sully is the owner of the
134 tax alleged, and as to whether he made the investigation alleged, and as to whether the action was had by the railway company, as is stated, these plaintiffs have no information or knowledge sufficient to form a belief.

That while it may be true that some individuals aided and encouraged the building of the road on the line adopted, yet plaintiffs allege that the corporation defendant had express notice that the tax would be contested, and that, notwithstanding such notice, they continued to construct the same, and at the time of the bringing of this suit had partly finished the road and had sold the same, as in the petition alleged.

Wherefore plaintiffs pray as in their original petition.

H. S. WINSLOW,
Att'y for Pl't'ffs.

135 STATE OF IOWA, } *ss:*
Jasper County, }

J. M. Rayburn, being sworn, says that he is one of the plaintiffs, and that the matters and things stated in this replication are true, as he verily believes.

J. M. RAYBURN.

Subscribed and sworn to by J. M. Rayburn before me, this 30th day of November, 1883.

[SEAL.] A. J. CRAVEN,
Notary Public.

(Endorsed:) W. R. Mathews *et al. v.* D. G. Winchell, treas., etc., *et al.* Circuit court. Replication. Filed Nov. 30, 1883. M. P. Doud, clerk. Winslow & Blanchard.

136 *Bill of Exceptions.*

In the Circuit Court of Iowa in and for Jasper County. November Term A. D. 1883.

WM. R. MATTHEWS *et al. vs.* D. G. WINCHELL *et al.*

Be it remembered that on the 28th day of November, A. D. 1883, this cause coming on for hearing on the application of the defendant Alfred Sully to remove said cause for trial to the circuit court of the United States for the district of Iowa, and pending the decision of the court on said application for removal, the plaintiffs move to dismiss said cause as to the defendant Alfred Sully; to which motion the defendant at the time objected, and which motion
137 was by the court sustained and defendants excepted thereto.

And on the 29th day of November, A. D. 1883, the court overruled the motion to transfer to the United States circuit court; to which ruling of the court the defendants at the time duly excepted.

And now on this 30th day of November, A. D. 1883, the plaintiffs move to strike out the record dismissing said cause as to the defendant Sully and to reinstate the cause as to him, which motion was by the court sustained and said entry stricken out; to which ruling of court the defendants (except D. G. Winchell and the township trustees) at the time duly except.

And the foregoing not all being of record, this bill of exceptions is now in open court duly signed, to the end that all of said
138 matters may fully appear of record herein.

W. R. LEWIS, *Judge.*

(Endorsed:) Wm. R. Matthews *et al. vs.* D. G. Winchell *et al.* Bill of exceptions. Filed Nov. 30, 1883. M. P. Doud, clerk.

139 *Petition for Removal to the Circuit Court of the United States, District of Iowa.*

In the Circuit Court of Iowa, in and for Jasper County. November Term, A. D. 1883.

WM. R. MATHEWS *et al.*

vs.

D. G. WINCHELL, Treasurer, A. SULLY *et al.*

To said court:

Your petitioner, Alfred Sully, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in this suit is between citizens of different States.

That your petitioner was at the time of the commencement
140 of this suit, and still is, a citizen and resident of the State of New York.

That each and all of the plaintiffs in this action were at the commencement of this suit, and still are, citizens and residents of the State of Iowa.

That the defendant, D. G. Winchell, treasurer of Jasper county, Iowa; the defendant, The New Sharon Coal Valley & Eastern Railroad Company, now the Chicago, Burlington & Pacific Railroad Company; and the defendants, Levi Conover, R. P. Ratliff, and S. W. Castor, trustees of Lynn Grove township, were each at the commencement of this suit, and still are, citizens and residents of the State of Iowa.

Your petitioner further represents to this honorable court that he is the owner of the tax in controversy in this action, and that
141 the other defendants are nominal parties, and have no interest in the said tax which is the subject-matter of this suit.

That there can be a final determination of the controversy in this suit, so far as concerns this defendant, without the presence of either or any of the other defendants as parties to this cause.

This action is brought for the purpose of restraining and enjoining this defendant from proceeding to collect the tax which is the subject-matter of this suit, and to have said tax declared illegal, null, and void, and to have the same cancelled and its collection perpetually enjoined.

Your petitioner further states that this suit has not been tried; that it is an equitable action, and this is the first term at which
142 said suit could be tried, and that it has not yet been reached for trial.

That it is now pending for trial in the circuit court of the State of Iowa for said county of Jasper.

That your petitioner desires to remove this suit into the circuit court of the United States for the district of Iowa, in pursuance of the act of Congress in that behalf provided, to wit: The Revised Statutes of the United States.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit
143 court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no futher herein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the District of Iowa; and we will ever pray.

A. K. CAMPBELL &
R. A. SANKEY,
Att'ys for Petitioner.

STATE OF IOWA, }
Jasper County, } *ss:*

I, R. A. Sankey, being duly sworn, do say that I am attorney for the petitioner in the above-entitled cause; that I have read
144 the foregoing petition and know the contents thereof; and that the statement and allegations therein contained are true, as I verily believe.

R. A. SANKEY.

Subscribed by the said R. A. Sankey in my presence, and by him sworn to before me, this the 27th day of November, A. D. 1883.

[SEAL.] JOHN C. WILSON,
Notary Public.

(Endorsed:) Filed Nov. 27, 1883. M. P. Doud, clerk.

145 Know all men by these presents, that we, Alfred Sully, as principal, and S. C. Cook and James Wilson, as surety, are hereby held and firmly bound unto William R. Mathews *et al.* in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such, that if the said Alfred Sully shall enter and file, or caused to be entered and filed, in the next circuit court of the United States in and for the district of Iowa, on the first day of its session, copies of all process, pleadings, depositions, testimony and other proceedings in a certain suit or action now pending [in] the circuit court of the county of Jas-

146 per and State of Iowa, in which William R. Mathews *et al.* are plaintiffs, and Alfred Sully and others are defendants, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void, otherwise of force.

Dated Nov. 27th, 1883.

ALFRED SULLY,
By A. K. CAMPBELL &
R. A. SANKEY,
His Att'ys.
S. C. COOK,
JAMES WILSON,
Sureties.

STATE OF IOWA, } ss:
Jasper County, }

147 The undersigned, surety for Alfred Sully, whose names are signed to the foregoing, being duly sworn, do severally depose and say, as follows:

I, S. C. Cook, do say that I am worth the sum of one thousand dollars, exclusive of property exempt from execution, and that I am a resident of and a freeholder in the State of Iowa.

I, James Wilson, do say that I am worth the sum of one thousand dollars, exclusive of property exempt from execution, and that I am a resident of and a freeholder in the State of Iowa.

S. C. COOK,
JAMES WILSON.

Subscribed and sworn to by S. C. Cook and James Wilson, before me and in my presence, this 27th day of November, 1883.

[SEAL.] J. M. CLEMENTS,
Notary Public in and for Jasper County, Iowa.

148 The above bond and security approved by me, this 27th day of November, 1883.

M. P. DOUD,
Clerk of the Circuit Court.

(Endorsed:) W. R. Mathews *et al. vs.* D. G. Winchell *et al.* Petition for removal to United States court. Filed Nov. 27, 1883. M. P. Doud, clerk.

149 *Motion to Require Plaintiffs to Number Paragraphs Sustained.*

STATE OF IOWA, } ss:
Jasper County, }

Be it remembered, that on this 25th day of April, 1883, at a term of the circuit court of Iowa in and for Jasper county, Hon. W. R. Lewis, judge of the sixth judicial circuit of Iowa, sole judge presiding, and on the 2d day of the April term, 1883, the following proceedings were had and entered of record, to wit:

WM. R. MATHEWS
vs.
D. G. WINCHELL *et al.* } 2457.

And now on this 2d day of this term of court, the same being the 25th day of April, A. D. 1883, came the def't, by R. A. Sankey
150 and A. K. Campbell, att'ys for the R. R. Co., and made the motion to require the plaintiffs to number the paragraphs in the petition, which was sustained.

WINSLOW & WILSON &
L. C. BLANCHARD
Appearing for the Pl't'ffs.

And afterwards, at the same term and in said cause, the following proceedings were had and entered of record on the 26th day of April, 1883, to wit:

WM. R. MATHEWS
vs.
D. G. WINCHELL, Treas., *et al.* } 2457.

Pending motion to dissolve injunction and motion to strike parts of petition and motion for more specific statement plaintiff given leave to amend petition and to make additional parties plaintiff.

Injunction modified to the extent of permitting the county
151 treasurer, D. G. Winchell, to receive all taxes offered to be paid by any tax payer.

And so far as this injunction applies to county treasurer, it is modified to the extent of not including any tax assessed or paid except taxes assessed or paid in by parties to this suit, to which pl't'ffs except.

Bond on appeal fixed at $750.00, and upon consent of parties modifications of the injunction made and to be made at this term shall stand superseded, without bond, for 7 days after rising of this court.

As to the other questions on the motion made, no ruling, and same taken under advisement.

Order.

This cause coming on for hearing, on motion of defendants to dissolve injunction, this third day of this term, being the 26th day of April, 1883, it is ordered by the court that the injunction
152 granted herein be modified to the extent of permitting the county treasurer, Winchell, to receive all taxes offered to be paid by any tax payer, and so far as injunction applies to county treasurer, it is modified to the extent of not including any tax assessed or paid, except taxes assessed or paid, except taxes assessed against or paid in by parties to this suit; to which pl't'ff excepts.

Bond on appeal is fixed at $750.00.

And upon consent of parties, modifications of this injunction made and to be made at this term shall stand suspended without bond for seven days after rising of this court.

And afterwards, on the 9th day of the same term of court, the same being the 3d day of May, 1883, the following proceedings were had and entered of record in said cause, to wit:

153 WILLIAM R. MATHEWS *vs.* D. G. WINCHELL, Treas., *et al.* } 2457.

Except as heretofore modified motion to dissolve is overruled, and def't excepts.

This cause coming up for hearing on motion to dissolve the injunction, Winslow & Wilson and L. C. Blanchard appearing for the plaintiff and R. A. Sankey for def't, with A. K. Campbell, the said motion was overruled, and def't excepts.

And the same day a motion for striking at pl't'ff's petition being overruled, def't excepts thereto.

And afterwards, on the 14th day of said term of court, the same being the 9th day of May, 1883, the following proceedings were had and entered of record in said cause, to wit:

154 WM. R. MATHEWS *vs.* D. G. WINCHELL, Treas., *et al.* } 2457.

Sankey & Campbell withdraw appearance for def'ts Winchell and Trustees of Lynn Grove Township, and withdraw answer as to them.

Set down for trials on depositions; plaintiff to file by Sept. 1st, 1883; def't by Oct. 15th, 1883, and rebuttal thereafter by first day of next term.

Continued.

And afterwards, on the 1st day of Nov. term, 1883, the same being the 26th day of Nov., 1883, Hon. W. R. Lewis, judge of the sixth judicial circuit of Iowa, sole judge presiding, the following proceedings were had and entered of record, to wit:

WM. R. MATHEWS *vs.* D. G. WINCHELL, Treas., *et al.* } 2457.

Defendants given leave to amend answer.

155 And afterwards, on the 3rd day of the same term of court, the same being the 28th day of Nov., 1883, the following proceedings were had and entered of record in this cause, to wit:

WM. R. MATHEWS *vs.* D. G. WINCHELL, Treas., *et al.* } 2457.

156 Application for removal to U. S. circuit court dismissed, and the defendant A. Sully excepts.

And afterwards, on the 5th day of said term of court, the same being the 30th day of Nov., 1883, the following proceedings were had and entered of record in said cause, to wit:

WM. R. MATHEWS
vs } 2457.
D. G. WINCHELL, Treas., *et al.*

Motion filed Nov. 27th, 1883, to suppress depositions submitted to be decided with the main case.

Trial to court on depositions, reporter taking schedule of the testimony, and upon agreement of parties in open court to be taken under advisement, argued in writing, decided, and decree entered in vacation.

157 Plaintiff to present argument by adjournment of court. Defendant- to present theirs by 30 days after receipt of plaintiff's argument.

And now, on this 5th day of this term of court, the same being the 30th day of Nov., 1883, came this cause on for hearing, H. S. Winslow appearing for the pl't'ff, and R. A. Sankey and A. K. Campbell for def'ts, it being tried to the court the motion to suppress depositions filed Nov. 27th, 1883, submitted to be decided with main case.

And entire cause submitted to be decided, and decree entered in vacation, to be argued in writing; plaintiff to present arguments by adjournment of court, def't'- to present theirs by 30 days after receipt of plaintiff's argument.

STATE OF IOWA, } *ss:*
Jasper County,

158 I, M. P. Doud, clerk of the circuit court of Iowa in and for Jasper county, do hereby certify that the within and foregoing is a true, perfect, and complete transcript of the journal entries, papers filed, and depositions taken and filed, and of all the records in said cause of Wm. R. Mathews *et al. vs.* D. G. Winchell, treasurer, *et al.*, as full, true, and complete as the original that remains on file and of record in this office.

Witness my hand and the seal of said circuit court, this 12th day of May, A. D. 1884.

[SEAL.] (S'g'd) M. P. DOUD,
Clerk of the Circuit Court.

(Endorsed:) W. R. Mathews *vs.* D. G. Winchell *et al.* 2041, Eq. Transcript from circuit court, Jasper county. Filed May 13, 1884. Ed. R. Mason, clerk.

159 And on the 13th day of May, 1884, the defendant, Alfred Sully, by R. A. Sankey, his solicitor, filed in said cause a *præcipe* for appearance, in the words and figures following, to wit:

160 *Præcipe for Appearance.*

United States Circuit Court, Southern District of Iowa.

W. R. MATHEWS
vs.
D. G. WINCHELL & ALFRED SULLY *et al.* } No. ——.

The clerk of said court will please enter my appearance for the defendant, Alfred Sully, and Winslow and Varnum for the plaintiff in above cause, and docket the same on chancery docket.

R. A. SANKEY,
Attorney for Alfred Sully.

The names of all parties for whom appearance is entered must be written in full.

(Endorsed:) U. S. circuit court, southern district of Iowa. No. —. W. R. Mathews *vs.* D. G. Winchell *et al.* *Præcipe* for appearance of def't. R. A. Sankey, attorney. Filed May 13, 1884. Ed. R. Mason, clerk.

161 And on the 13th day of May, 1884, the complainant, by Winslow & Varnum, his solicitors, filed in said cause a motion to remand the cause, in the words and figures following, to wit:

162 *Motion to Remand Cause to the Circuit Court of Jasper Co., Iowa.*

In the United States Cir. Court in & for the Southern Dist. of Iowa.

WILLIAM R. MATHEWS *et al. v.* D. G. WINCHELL, Treas., &c., *et al.*

And come the plaintiffs, and move the court to remand this cause to the circuit court of Jasper county, Iowa, because—

I. This court has no jurisdiction of subject-matter in controversy or the parties thereto.

II. The claim of the defendant, A. Sully, is based upon, and in favor of, said defendant, as an assignee of a contract, not a promissory note, negotiable by the law merchant, or a bill of ex-
163 change, and no suit could have been prosecuted in this court if no assignment had been made of the same.

III. The petition for the removal to this court shows that the assignor of defendant Sully is a resident and citizen of the State of Iowa, and that the matter assigned is not negotiable by the law merchant or a bill of exchange.

IV. There is but a single issue involved in the cause, and that is, the validity and collectibility of the taxes voted, and the treasurer of Jasper county, Iowa, is a necessary and indispensable party defendant to the proceeding.

V. Under the alleged assignment the defendant Sully has and can have nothing to do with the collection of the tax voted.

VI. Defendant Sully has no right to any thing under his assignment but to receive the taxes when collected.

164 VII. The material relief prayed can be granted without defendant Sully being a party to the action.

VIII. The controversy is not wholly between citizens of different States.

IX. There is no proof in the record, or fact found, that any statement contained in the petition for the removal is true.

X. There is nothing showing that a bond was offered and filed with good and sufficient surety thereon.

XI. The defendant Sully stands *stands* in the shoes of his assignor, and if it could not remove the cause he cannot, and it appears from the record that it could not.

XII. While the aggregate of the tax voted may exceed the sum of five hundred dollars, yet there is nothing showing that the

165 individual tax of either plaintiffs amounts to that sum, and, on the contrary, plaintiffs aver that the tax voted and levied against the plaintiffs in no case amounts to the sum of four hundred dollars as against any one plaintiff, which fact the plaintiffs offer to show by competent proof upon the hearing of this motion.

XIII. The amount in controversy as to each of the plaintiffs does exceed the sum of five hundred dollars, as shown by affidavit hereto attached.

XIV. There is no showing or allegation that the other defendants named with defendant Sully are not necessary and indispensable party defendants.

XV. The defendant has waived his right to have the cause removed by agreeing that the cause might be decided in va-

166 cation and decree entered

XVI. The petition for removal was filed after the cause had been tried on demurrer, and comes too late.

WINSLOW & VARNUM,
Att'ys for Pl't'ffs.

STATE OF IOWA, }
Jasper County, } *ss:*

S. H. Galusha, being duly sworn, says he is treasurer of Jasper Co., Iowa, and the successor of D. G. Winchell.

That as such treasurer I have in my possession under my custody and control the tax books for Lynn Grove township, in said county; that the said tax books show the amount of taxes assessed against each of the plaintiffs in the case of William R. Mathews *et al. vs.* D. W. Winchell, treas., &c., *et al.*, in aid of the New Sharon Coal Valley & Eastern Railroad Company, under a vote taken for that

167 purpose in said township, and that but one such vote was carried in said township.

That the amount of tax assessed against each of said plaintiffs under and by virtue of said vote as aforesaid is less than five hundred dollars, and less than three hundred dollars, except the plaintiff, William R. Mathews, whose tax is five hundred and forty-eight

dollars and fifty cents, and the plaintiff, Thomas Sherman, whose tax is five hundred and and four dollars and thirty-five cents.

(Signed) S. H. GALUSHA,
Treas. Jasper Co.

Subscribed & sworn to by S. H. Galusha before me & in my presence, this 12th day of May, 1884.

[SEAL.] (S'g'd) H. S. WINSLOW,
Notary Public.

168 (Endorsed:) Wm. R. Mathews *et al. vs.* D. G. Winchell, treas., &c., *et al.* U. S. cir. court. Motion [to] remand cause to cir. court, Jasper Co., Iowa. Filed May 13, 1884. Ed. R. Mason, clerk.

169 And on the 16th day of May, 1884, in the record of proceedings of said court is an entry in said cause, in the words and figures following, to wit:

170 United States Circuit Court, Central Division, Southern District of Iowa. May Term, 1884.

FRIDAY, *May 16th*, 1884.

WILLIAM R. MATHEWS
vs.
D. G. WINCHELL, Treas., A. SULLY, *et al.* } No. 2041. Eq.

This cause came on this day for hearing upon complainant's motion to remand this cause. Complainant appears by Winslow & Varnum, and the defendant, A. Sully, by R. A. Sankey. And after argument of counsel thereon, the said motion to remand is submitted to the court, and the court being now fully advised in the premises, it is ordered that the said motion to remand be, and the same is hereby, sustained.

It is therefore ordered and decreed that this cause be, and the same is hereby, remanded to the circuit court of Iowa in and for Jasper county at the costs of Alfred Sully.

It is further ordered, adjudged, and decreed that said de-
171 fendants, Alfred Sully, pay the costs herein, taxed at $———, and that execution issue therefor; to which ruling the defendant, Alfred Sully, at the time duly excepted.

172 And on the 19th day May, 1884, in the record of the proceedings in said court is an entry in said cause, in the words and figures following, to wit:

173 United States Circuit Court, Central Division, Southern District of Iowa. May Term, 1884.

MONDAY, *May* 19, 1884.

J. L. MATHEWS
vs.
D. G. WINCHELL, Treas., ALFRED SULLY, *et al.* } No. 2041. Eq.

This cause coming on this day for hearing, the defendant, Alfred Sully, in open court, prays an appeal to the Supreme [Court] of the United States, which is allowed, and the appeal bond herein is fixed at the sum of one thousand dollars, with sureties to be approved by one of the judges of this court.

174 And on the 21st day of May, A. D. 1884, an appeal bond was filed in said cause, in the words and figures following, to wit:

175 Circuit Court of the United States, Southern District Iowa, Central Division.

WILLIAM R. MATHEWS
vs.
D. G. WINCHELL, Treasurer of Jasper County, Iowa, ALFRED SULLY, *et al.* } 2041. Eq.

Know all men by these presents, that we, Alfred Sully, as principal, and S. C. Cook and Samuel Merrill, as sureties, are held and firmly bound unto William R. Mathews in the sum of one thousand dollars, to be paid to the said William R. Mathews, his heirs, executors, or administrators.

To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our
176 heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this 21st day of May, 1884.

Whereas the above-named Alfred Sully hath prayed an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the circuit court of the United States, southern district Iowa, central division:

Now, therefore, the condition of this obligation is such, that if the above-named Alfred Sully shall prosecute his said appeal to effect, and answer all costs and damages if he shall fail to make good his plea, this obligation shall be void; otherwise, to remain in full force and virtue.

Sealed and delivered in presence of—

ALFRED SULLY,
177 By R. A. SANKEY, *His Att'y.*
(Signed) S. C. COOK.
SAMUEL MERRILL.

UNITED STATES OF AMERICA, *District of Iowa:*

S. C. Cook and Samuel Merrill, being duly sworn, deposes and say, and each for himself saith: That he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

(Signed) S. C. COOK.
SAM'L MERRILL.

Subscribed and sworn to before me and in my presence by S. C. Cook, this 21st day of May, 1884.

[SEAL.] (S'g'd) JOHN C. WILSON,
Notary Public in and for Jasper County, Iowa.

178 Subscribed and sworn to before me by Sam'l Merrill, this 21 day of May, 1884.

[SEAL.] (S'g'd) R. H. PARRY,
Notary Public, Polk Co., Iowa.

I approve the above bond and the sufficiency of the sureties thereto.

May 21, 1884.

(Signed) J. M. LOVE, *Judge.*

(Endorsed:) 2041. Eq. U. S. C. C't, Io'a. William R. Mathews *vs.* D. G. Winchell, treas. Alfred Sully, *et al.* Appeal bond. Filed May 21, 1884. Ed. R. Mason, clerk.

179 And on the 29th day of September, 1884, an original citation was filed in said cause, in the words and figures following, to wit:

180 The United States of America to William R. Mathews, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the United States circuit court, southern district of Iowa, central division, wherein Alfred Sully is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James M. Love, judge of the circuit court U. S., southern district Iowa, this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

J. M. LOVE, *Judge.*

181 On this 6th day of August, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared James T. McMurray before me, the subscriber, and makes oath that he delivered a true copy of the within citation to William R. Mathews, and

served the said citation on him by reading the same to him in Sully, Jasper county, Iowa, on the 6th day of August, A. D. 1884.

JAMES T. McMURRAY, *Constable.*

Sworn to and subscribed before me by James T. McMurray, August 6th, A. D. 1884.

[SEAL.]

S. C. COOK,
Notary Public in and for Jasper County, Iowa.

Fees, $2.40. P'd by d'f't Sully.

[Endorsed:] Filed Sep. 29, 1884. Ed. R. Mason, clerk.

182 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause adjudicated in said court, wherein William R. Mathews was complainant and D. G. Winchell, treasurer, &c., *et al.*, were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation is hereto attached and herewith returned, with service endorsed thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at my office, in Des Moines, in said district, this 9th day of October, 1884.

[SEAL.]

E. R. MASON,
Clerk U. S. C. C., Southern District of Iowa.

Endorsed on cover: S. Iowa C. C. U. S. No. 1117. Alfred Sully, appellant, *vs.* William R. Mathews. Filed 18th October, 1884.

113-293

Supreme Court of the United States.

No. 1117.

ALFRED SULLY, APPELLANT,

vs.

WM. R. MATHEWS ET AL., APPELLEES.

Come now the appellees, William R. Mathews *et al.*, by their attorneys, H. S. Winslow, L. C. Blanchard, and Geo. C. Morgan, and respectfully show to this Honorable Court that said cause is a removal cause under the act of March 3d, 1875, providing for the removal of causes from the State to the Federal courts, and comes to this Honorable Court on appeal from the remanding order of the honorable circuit court of the United States for the southern district of Iowa; wherefore said appellees by their counsel aforesaid would respectfully move this Honorable Court for the advancement of said cause, under the provisions of Rule 32 of this Honorable Court.

H. S. WINSLOW,
L. C. BLANCHARD,
GEO. C. MORGAN,
Att'ys for Appellees.